LOUIS EDWARD VAN BUERLE

v.

BADAN PEGUAM MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
RAUS SHARIF J
[SUMMONS ORIGINATING NO: R1-17-5-05]
27 MAY 2005

LEGAL PROFESSION: *Law Society/Malaysian Bar - Meetings - Annual general meeting - Quorum - Whether quorum of one-fifth of total number of the Malaysian Bar required for holding of annual general meeting - Legal Profession Act 1976, ss. 64, 65 & 67*

LEGAL PROFESSION: *Law Society/Malaysian Bar - Meetings - Whether general meeting includes an annual general meeting - Legal Profession Act 1976, ss. 64, 65 & 67*

At the 59th annual general meeting ('AGM') of the Malaysian Bar, a point of order was called when the President of the Malaysian Bar proceeded to refer to the AGM's agenda. The question of whether there was a quorum of one-fifth of the members of the Malaysian Bar present was raised. The President of the Malaysian Bar ruled that there was no legal requirement for such quorum and that the AGM could proceed. However the plaintiff – a member of the Malaysian Bar – disagreed with the President's views and walked out of the AGM. He later applied to declare the 59th AGM of the Malaysian Bar invalid and for other consequential relief. The plaintiff argued that there was a quorum requirement for an AGM of the Malaysian Bar and that the quorum was one-fifth of the members of the Malaysian Bar as provided for under s. 67(1) of the Legal Profession Act 1976 ('the LPA'). The defendant – the Malaysian Bar – argued otherwise, submitting that the one-fifth quorum provided under s. 67(1) of the LPA applied only to a general meeting of the Malaysian Bar and not to an annual meeting under s. 64 of the LPA.

Held (allowing the plaintiff's application):

[1] Although s. 64 of the LPA is silent on the quorum requirement, it does not necessarily support the defendant's contention that a quorum is unnecessary for an AGM of the Malaysian Bar. Section 64 is not independent or self contained. It cannot be interpreted in isolation or be independent of ss. 65 and 67. This view is supported by the fact that

s. 64, like ss. 65 and 67, falls under the general heading 'General meeting of the Malaysian Bar' in the LPA. The general meeting of the Malaysian Bar must thus include the AGM under s. 64 and the general meeting under s. 65. (p 642 f-g)

[2] To construe s. 64 literally and to accept the defendant's contentions would lead to an absurd and illogical situation where a motion proposed under s. 65(5) at a general meeting would need a quorum under s. 67(1) to be debated and passed, but that similar motion if proposed at an AGM would not need such quorum. It could not be Parliament's intention when amending s. 67(1) in 1978, by increasing the quorum to one-fifth of the total number of the Malaysian Bar, to limit its application only to general meetings of the Malaysian Bar under s. 65. The one-fifth quorum requirement thus applies to both ss. 64 & 65. (pp 642 h & 643 a-e)

[3] In the instant case, the required one-fifth quorum requirement for the Malaysian Bar's 59th AGM was 2,351 members. However there were present at the 59th AGM only 1,152 members. Thus the required quorum was not present at the 59th AGM of the Malaysian Bar. The absence of the quorum rendered the proceedings at the 59th AGM null and void. All acts or decisions done, taken or made at the 59th AGM were thus invalid. (p 643 f-h)

Case(s) referred to:
Harman v. Energy Research Group Australia Ltd; Davidson v. Energy Research Group Australia Ltd [1985] 3 ACLR 538 ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 41, 42(2)(d), 56, 64, 65(2), (4), 67(1), 70A(2)

For the plaintiff - Zainur Zakaria (V Arivanandan with him); M/s Cheong Wai Meng & Van Buerle
For the respondent - Sulaiman Abdullah (Tommy Thomas, Robert Lazar & Sunil Abraham with him); M/s Shearn Delamore & Co

Reported by Andrew Christopher Simon

JUDGMENT

Raus Sharif J:
This is an application by way of originating summons filed by the plaintiff seeking for the following reliefs:

(a) A declaration that the 59th annual general meeting of the Malaysian Bar year 2004/2005 held on Saturday, 19 March 2005 at the Nikko Hotel is invalid and be set aside;

(b) A declaration that the decisions and resolutions passed at the 59th annual general meeting be declared invalid and be set aside;

(c) A declaration that the election of the principal office bearers of the Bar Council be deemed void and be set aside; and

(d) An order that the outgoing Bar Council for the year 2004/2005 and/or the new members of the Bar Council elected for the year 2005/2006 convene a new annual general meeting within 30 days from the date of this Court grants the plaintiff's application to conduct the business of the Malaysian Bar as provided under the Legal Profession Act 1976 (the LPA).

The undisputed facts of this case are these. The plaintiff is a member of the Malaysian Bar. The Malaysian Bar, the defendant, is a body corporate established under s. 41 of the LPA. The management of the affairs of the Malaysian Bar and performance of its functions are vested in and managed by the Bar Council pursuant to s. 56 of the LPA.

On 19 March 2005, at 10am the Malaysian Bar held its 59th annual general meeting at the Grand Ballroom Nikko Hotel, Kuala Lumpur. There were 1,152 members present. When the President of the Malaysian Bar proceeded to refer to the agenda of the 59th annual general meeting, a point of order was called and the question of whether there was a quorum of one-fifth of the members of Malaysian Bar present was raised. The president of the Malaysian Bar informed the members present that the Bar Council has sought four legal opinions from its solicitors with regard to the issue whether a quorum of one-fifth of the members of the Malaysian Bar was a requirement for an annual general meeting pursuant to s. 64 of the LPA. The President of the Malaysian Bar further informed the members that the Bar Council, having considered the four legal opinions of its solicitors and having deliberated on the issue, took the position that a quorum of one-fifth of the members of the Malaysian Bar was not a requirement for an annual general meeting of the Malaysian Bar, to be conducted.

There was a discussion on the issue in which diverse views were expressed. The President of the Malaysian Bar, having listened and considered all views expressed, ruled that the 59th annual general meeting of the Malaysian Bar would proceed accordingly as there is no legal requirement that a quorum of one-fifth of the members must be present at the annual general meeting of the Malaysian Bar.

The plaintiff and a few other members walked out of the 59th annual general meeting of the Malaysian Bar. On 4 April 2005, the plaintiff instituted the present legal proceedings against the Malaysian Bar.

Hence, the principle issue to be determined in this case is whether s. 64 of the LPA requires a quorum of one-fifth of the total number of members of the Malaysian Bar to be present for business to be transacted at an annual general meeting of the Malaysian Bar.

The plaintiff submitted that there is a quorum requirement for an annual general meeting of the Malaysian Bar and the quorum is one-fifth of the members of the Malaysian Bar as stated in s. 67(1) of the LPA. The defendant submitted otherwise. According to the defendant whomever are present at the annual general meeting of the Malaysian Bar constitute the quorum. To the defendant, as long as there are members of the Malaysian Bar present, that should suffice and there need not be present one-fifth of the members of the Malaysian Bar.

In order to address the issue, it is necessary to reproduce s. 64 to s. 67 of the LPA which deals with matters relating to meetings of the Malaysian Bar.

64 Annual General Meetings

(1) The Bar Council shall each year convene an annual general meeting of the Malaysian Bar to be held before the first day of April.

(2) The Bar Council shall cause to be prepared and presented to the annual general meeting:

(a) a report on the activities of the Malaysian Bar during its term of office; and

(b) proper accounts, duly audited, of all funds, property and assets of the Malaysian Bar for the twelve months terminating on the 31st day of December immediately preceding such general meeting.

65 General Meeting

(1) The Bar Council may convene a general meeting of the Malaysian Bar other than the annual general meeting at any time the Bar Council considers it necessary or expedient.

(2) Any fifty members of the Malaysian Bar may at any time requisition a general meeting by written notice in that behalf signed by them and served on the President, Vice-President or the Secretary of the Malaysian Bar; and the Bar Council shall convene a general meeting to be held within thirty days of such service.

(3) The written notice shall specify the object or objects of the proposed meeting.

(4) If the Bar Council fails to convene a general meeting in accordance with the requisition within thirty days of the service of such requisition, the requisitioning members may convene the general meeting within sixty days of such service.

(5) If any member of the Malaysian Bar desires to propose any motion to be considered at the annual or other general meeting to be convened under this section, he shall not less than seven days before the date of the meeting serve upon the Secretary of the Malaysian Bar notice of such motion in writing.

66 Voting

At every general meeting other than an annual general meeting, every member present shall have one vote and the Chairman of that meeting shall have a casting vote.

67 Quorum

(1) The quorum for a general meeting of the Malaysian Bar shall be one-fifth of the total number of members of the Malaysian Bar personally present or any greater number of as shall be provided under any rules made pursuant to section 42(2)(d) and no business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.

(2) Any general meeting, whether convened on the requisition of members pursuant to section 65(2) or convened pursuant to section 65(4), shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting.

(3) Any question at a general meeting of the Malaysian Bar shall be decided by the votes of not less than two-thirds of the members present and voting.

From the above provisions it would, therefore, clear that the answer to the question whether a quorum is necessary for an annual general meeting of the Malaysian Bar pursuant to s. 64 turns to some extent to the interpretation that one gives to s. 67(1) of the LPA.

The plaintiff interpreted the opening words of s. 67(1) "The quorum for a general meeting" to include the annual general meeting. It was submitted by the plaintiff that the interpretation that there is no legal requirement of one-fifth of the members must be present at the annual general meeting of the Malaysian Bar is completely erroneous and misconceived. According to the plaintiff when the LPA was first introduced in 1976 the quorum for any

general meeting, as specified under s. 67(1) was only 50 members. In 1978, s. 67(1) was amended and the words "fifty members" were substituted with the words "one-fifth of the total of members of the Malaysian Bar". Since then, according to the plaintiff, the Malaysian Bar and the Bar Council has interpreted the quorum requirement specified under s. 67(1) as applicable to the annual general meeting and general meetings of the Malaysian Bar. According to the plaintiff the quorum of one-fifth is no doubt difficult to meet and as such, over the years attempts were made by the Malaysian Bar to have the quorum of one-fifth reduced, by way of representation to the Government, but to no avail. Thus, according to the plaintiff that the decision of the Malaysian Bar to depart from the interpretation that it had given to s. 67(1) for more than two decades cannot be supported in law.

The defendant, on the other hand interpreted the opening words of s. 67(1) to exclude the annual general meeting and to confine the language to a general meeting of the Malaysian Bar other than the annual general meeting. According to the defendant, s. 64 must be read independently of s. 67(1) of the LPA. It means that the provision with regard to a quorum of one-fifth of the members of the Malaysian Bar as set out in s. 67(1) only applies to a general meeting of the Malaysian Bar convened pursuant to s. 65(1) or s. 65(2) of the LPA.

To support the argument, a comparison was drawn by the defendant to the provisions of the LPA regarding the annual general meeting and the general meeting of the State Bar. It was pointed that s. 70 of the LPA which deal with the annual general meeting of the State Bar specifically provide for a quorum. Section 70(2) provides that the quorum for the annual general meeting of the State Bar shall be one-third of the total number of members of the State Bar. A similar quorum requirement is also provided by s. 70A(2), for a general meeting of the State Bar, which is also one-third of the total of the State Bar members. Thus, it was argued by the defendant that the difference in construction of the provisions of a quorum for an annual general meeting and general meeting of a State Bar when compared to the Malaysian Bar is strong indication that it was never the intention of Parliament to impose a quorum for an annual general meeting of the Malaysian Bar. According to the defendant if Parliament had intended that a quorum is required for an annual general meeting of the Malaysian Bar, then a similar provision would have been made to s. 64, as what was done to s. 70 of the LPA.

It is also pointed out by the defendant that the amendment to s. 67(1) of the LPA in 1978, increasing the quorum requirement from 50 members to one-fifth of the members of the Malaysian Bar having to be present, was prompted by the events that transpired at the October 1977 extraordinary general meeting of the Malaysian Bar which resolved that members of the Malaysian Bar should boycott trials under Essential (Security Cases) Regulations 1975 (ESCAR). Thus, according to the defendant the mischief was directed at the resolution passed at the general meeting of the Malaysian Bar and not at the annual general meeting. To the defendant, it was not Parliament's intention to disturb the routine and annual businesses of the Malaysian Bar like the presentation of accounts and reports or changes of leadership of the Bar Council. The amendment to s. 67(1) was therefore, according to the defendant directed at the events of a general meeting and the purpose was, from the legislative perspective, to ensure that a small group did not dominate the meeting.

With due respect, I am unable to subscribe to the submission of the defendant. I am of the view that the term general meeting of the Malaysian Bar refers to both the annual general meeting under s. 64 and the general meeting under s. 65. The fact that the meeting in s. 64 is termed as annual general meeting does not make it any less a general meeting. To borrow the words of Brinsden J in the case of *Harman v. Energy Research Group Australia Ltd.; Davidson v. Energy Research Group Australia Ltd.* [1985] 3 ACLR 538 that "There is no magic in the use of the word "general". If all the members meet, it seems to me that the meeting must be a general meeting, although at the same time, it may also be an extraordinary general meeting or an annual general meeting."

To me, no doubt, s. 64 by itself is silent on the quorum requirement, but it does not necessarily or automatically support the defendant's contention that a quorum is not necessary for an annual general meeting of the Malaysian Bar. This is because s. 64 is not self independent or self contained. It cannot be interpreted in isolation or independent of s. 65 and s. 67. This view is supported by the fact that s. 64, like s. 65 and 67 fall under the general heading which reads "General meeting of the Malaysian Bar" (emphasis added). Hence, to my mind the general meeting of the Malaysian Bar must encompass the annual general meeting under s. 64 and the general meeting under s. 65.

Further, I have difficulties in seeing the rationale and logic of the defendant's argument that Parliament must have intended to exclude the quorum requirement for an annual general meeting of the Malaysian Bar. To my mind, to construe s. 64, giving it a literal construction, and thereby saying there is no quorum requirement for an annual general meeting of the Malaysian Bar,

will lead to absurdity. This is because from the affidavit filed by the plaintiff in support of this application, the annual general meeting of the Malaysian Bar is not a mere routine statutory meeting. In fact, the businesses transacted at the annual general meeting are not confined to the tabling of the reports and accounts but often included important motions and resolutions which were extensively debated and passed. Such motions tabled at the annual general meeting must have come through s. 65(5) which allows any member of the Malaysian Bar to propose any motion to be considered at the annual or other general meeting. Thus, if the defendant's proposition that no quorum were required at the annual general meeting is correct, then there would be a situation that any motion proposed under s. 65(5) at a general meeting will need a quorum as required by s. 67(1) to be debated and passed, whereas a similar motion if proposed at an annual general meeting will not need such quorum. Such a situation is not only absurd but also illogical. Surely, it could not have been the intention of Parliament when amending s. 67(1) in 1978, by increasing the quorum to one-fifth of the total number of the Malaysian Bar to limit its application only to the general meeting of the Malaysian Bar under s. 65.

Thus, I am of the view, the quorum requirement of one-fifth of the total number of member of the Malaysian Bar under s. 67(1) applies to both s. 64 and s. 65. To my mind, the reason why no specific mention of the quorum for the annual general meeting of the Malaysian Bar as opposed to annual general meeting of the State Bar and general meeting of the State Bar, is because, the words 'general meeting' are used generically with respect to general meeting of the Malaysian Bar, whether the annual general meeting under s. 64 or the general meeting under s. 65.

In conclusion, my view is that there is a quorum requirement for an annual general meeting of the Malaysian Bar under s. 64 of the LPA. The quorum is one-fifth of the total number of members of the Malaysian Bar personally present as stated in s. 67(1) of the LPA. Currently, the membership of the Malaysian Bar is 11,755. The required one-fifth quorum is therefore 2,351. The members of the Malaysian Bar who personally were present at the 59th annual general meeting was only 1,152. Thus, the quorum was not present at the 59th annual general meeting of the Malaysian Bar. The absence of the quorum rendered the 59th annual general meeting completely abortive, null and void and all acts or decision to have been done, taken or made at the 59th annual general meeting are accordingly nugatory and invalid.

Accordingly, the plaintiff's application is allowed. As the plaintiff is not seeking for costs, I made no order as to costs.